Taman Ekar Sdn Bhd & Ors v Sinesinga Sdn Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO D-22NCC-671 OF 2010
MOHAMAD ARIFF J
25 FEBRUARY 2011

Contract — Breach — Time of the essence — Breach of undertaking — Whether there was express undertaking to deliver redemption documents within agreed time — Whether parties expressly agreed that time was of essence of contract — Whether there was sufficient evidence of waiver — Whether there was breach — Contracts Act 1950 s 56

The banking facilities granted by Southern Bank Bhd to the first plaintiff were secured by two charges of properties owned by the second and third plaintiffs. Subsequently, the rights and liabilities of the bank were transferred and vested in the defendant by way of a vesting order made by the High Court. The defendant agreed to allow the charged properties to be redeemed by the plaintiffs for RM1m and RM6m respectively. The plaintiffs alleged that the payment of the redemption sums by way of two cheques was subject to the defendant's express undertaking to deliver nine documents ('the redemption documents') within the agreed time of seven days from the date of clearance of the two cheques. When the defendant failed to submit the redemption documents within the seven days, the plaintiffs commenced the present action for breach of an undertaking against the defendant. The plaintiffs contended that the defendant's delay in forwarding the redemption documents had resulted in the purchaser of the charged properties aborting the intended sale and purchase of the charged properties. The plaintiffs sought, inter alia, damages of RM20m, interest and general damages. The defendant argued that the seven working day undertaking was unilaterally imposed by the plaintiffs and that in any event the plaintiffs had waived this requirement when they later proceeded to present the discharge of charge documents at the land office. The defendant also disclaimed any prior knowledge of the intended sale and purchase transactions. By agreement of the parties, the court tried the instant dispute on the admitted documents.

Held, dismissing the plaintiffs' claim for compensation with costs:

(1) The evidence suggested that the seven working day undertaking was unilaterally imposed by the plaintiffs. Under s 56(1) of the Contracts Act 1950 ('the Act'), it had to be proven that the defendant had promised to deliver the redemption documents within seven days and any unilateral

imposition by the plaintiffs would not satisfy this requirement. It had to be established that the parties had expressly agreed that time shall be of the essence (see paras 19 & 22(b)).

(2) Even if the defendant had promised to deliver the redemption documents within the seven days from the clearance of the two cheques, there was sufficient evidence of waiver on the part of the plaintiffs. In fact, there was sufficient evidence to conclude that the plaintiffs had accepted the performance of the promise to deliver the redemption documents at a time other than that agreed. Under s 56(3) of the Act, the plaintiffs could not claim compensation for any loss occasioned by the non-performance unless at the time of the acceptance they gave notice of their intention to do so. However, in the instant case there was no evidence of the plaintiffs giving such a notice under s 56(3) of the Act (see paras 19 & 22(e)).

(3) Further, it had not been established on the agreed documents that the defendant was fully aware at the time the request for the redemption documents was made that the plaintiffs had entered into the sale and purchase of the charged properties (see para 22(l)).

[Bahasa Malaysia summary

Kemudahan-kemudahan perbankan yang diberikan oleh Southern Bank Bhd kepada plaintif pertama telah dijamin oleh dua pajakan hartanah yang dimiliki oleh plaintif kedua dan ketiga. Kemudiannya, hak dan liabiliti bank dipindahkan dan diletakhakkan di dalam defendan melalui perintah letakhak yang dibuat oleh Mahkamah Tinggi. Defendan bersetuju untuk membenarkan hartanah yang digadaikan tersebut ditebus oleh plaintif-plaintif masing-masing untuk RM 1 juta dan RM 6 juta. Plaintif-plaintif mendakwa bahawa bayaran jumlah penebusan melalui dua cek adalah tertakluk kepada aku janji nyata defendan untuk menghantar sembilan dokumen ('penebusan dokumen-dokumen') dalam masa tujuh hari seperti yang dipersetujui dari tarikh kelulusan kedua-dua cek tersebut. apabila defendan gagal untuk menyerahkan dokumen-dokumen penebusan dalam masa tujuh hari tersebut, plaintif-plaintif memulakan tindakan ini untuk kemungkiran aku janji terhadap defendan. Plaintif-plaintif berhujah bahawa kelewatan defendan dalam menyerahkan dokumen-dokumen penebusan tersebut mengakibatkan pembeli hartanah yang digadaikan tersebut menghentikan jual beli yang diniatkan terhadap hartanah yang digadaikan. Plaintif-plaintif memohon, antara lain, ganti rugi sebanyak RM20 juta, faedah dan ganti rugi am. Defendan berhujah bahawa aku janji tujuh hari bekerja secara literal dikenakan oleh plaintif-plaintif dan bahawa jika plaintif-plaintif telah mengetepikan kehendak ini apabila mereka kemudiannya meneruskan untuk mengemukakan penyelesaian dokumen-dokumen gadaian di pejabat tanah. Defendan juga menafikan apa-apa pengetahuan terdahulu terhadap transaksi

jual beli yang diniatkan. Melalui persetujuan pihak-pihak, mahkamah membicarakan pertikaian ini atas dokumen-dokumen yang dimasukkan.

Diputuskan, menolak tuntutan plaintif-plaintif untuk pampasan dengan kos:

(1) Keterangan mencadangkan bahawa aku janji tujuh hari bekerja adalah secara literal dikenakan oleh plaintif-plaintif. Di bawah s 56(1) Akta Kontrak 1950 ('Akta'), ia patut dibuktikan bahawa defendan telah berjanji untuk menghantar dokumen-dokumen penebusan dalam masa tujuh hari dan apa-apa pengenaan melibatkan pihak sebelah oleh plaintif-plaintif tidak akan memenuhi kehendak ini. Ia patut ditetapkan bahawa pihak-pihak telah secara nyata bersetuju bahawa masa adalah intipati (lihat perenggan 19 & 22(b)).

(2) Walaupun defendan berjanji untuk menghantar dokumen-dokumen penebusan dalam masa tujuh hari daripada penjelasan kedua-dua cek, terdapat keterangan yang mencukupi mengenai pelepasan oleh pihak plaintif-plaintif. Sebenarnya, terdapat keterangan yang mencukupi untuk memutuskan bahawa plaintif-plaintif telah menerima pelaksanaan perjanjian untuk menghantar dokumen-dokumen penebusan pada masa lain selain daripada masa yang dipersetujui. Di bawah s 56(3) Akta, plaintif-plaintif tidak dapat menuntut pampasan untuk apa-apa kerugian yang disebabkan oleh ketidak laksanaan kecuali pada masa penerimaan mereka memberi notis niat mereka untuk berbuat demikian. Walau bagaimanapun, dalam kes ini tidak terdapat keterangan mengenai plaintif-plaintif memberi notis sedemikian di bawah s 56(3)Akta (lihat perenggan 19 & 22(e)).

(3) Selanjutnya, ia tidak ditetapkan atas dokumen-dokumen yang dipersetujui bahawa defendan sedar bahawa pada masa permohonan untuk dokumen-dokumen penebusan tersebut dibuat plaintif-plaintif telah memasuki jual beli hartanah yang digadaikan tersebut (lihat perenggan 22(l)).]

Notes

For cases on time of essence, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3222–3233.

Cases referred to

Sakinas Sdn Bhd v Siew Yik Hau & Anor [2002] 5 MLJ 497, HC (refd)

WJ Alan & Co v El Nasr Export and Import Co [1972] 2 QB 189, CA (refd)

Legislation referred to

Contracts Act 1950 s 56, 56(1), (3)
Housing Developers (Control and Licensing) Act 1966
National Land Code Form 16N

RK Nathan (So Chien Hao with him) (CH So & Associates) for the plaintiffs.
Lambert Rasa Ratnam (Sean Yeow Huang-Meng & Joyce Lim Mei Ting with him) (Lee Hishammuddin Allen & Gledhill) for the defendants.

Mohamad Ariff J:

INTRODUCTION

[1] The parties in this case have agreed to have this court try the dispute on the admitted documents (*Ikatan Dokumen Yang Dipersetujui*, bundle A) and further, to proceed first on the issue of liability, and should the court rule in favor of liability, it will then proceed to consider the issue of damages and quantum.

[2] The principal facts are relatively few, and the main issue revolves around the question whether there has been a breach of an undertaking by the defendant through their solicitors to submit what has been described by the plaintiffs as the redemption documents within the agreed time of seven days from the date of clearance of two cheques sent by the plaintiffs' solicitors in respect of the redemption of two properties. The plaintiffs contend the defendant failed to forward these documents within the agreed time, and given the delay in forwarding the redemption documents, the plaintiffs have suffered loss when the intended purchasers of the two properties (Aneka Idaman Sdn Bhd ('Aneka Idaman')) decided to terminate the sale and purchase agreements.

THE CLAIM

[3] The plaintiffs allegedly suffered a loss of RM800,000 for the first property and RM5m in respect of the second property. The essence of the plaintiffs' case is to be seen in paras 21 and 22 of the statement of claim. The reference in para 21 is to the failure of the defendant to forward the discharge documents and/or 'dengan cuainya melaksanakan obligasinya dengan tidak melepaskan gadaian-gadaian … dalam tempoh masa yang munasabah dan/atau dengan salahnya memperpanjangkan proses pelepasan gadaian sehingga Plaintif Kedua dan Ketiga mengalami kerugian di mana bakal pembeli telah menamatkan Perjanjian Jual Beli … lanjutan dari kegagalan dan/atau kecuaian Defendan'.

[4] The relief are prayed in para 23, and under this head the plaintiffs are asking for, inter alia, damages of RM20m and interest thereon at 8%pa and general damages.

[5] The claim under para 23(a) has been withdrawn with liberty. This is a

A subject matter of a different claim which is up on appeal.

BACKGROUND FACTS

B **[6]** There are certain undisputed facts in this claim. The original banking facilities were granted by Southern Bank Bhd to the first plaintiff, and the securities provided were:

(a) a third party charge by the second plaintiff over its land (Geran 88410, Lot 19502 Town and District of Seremban, Negeri Sembilan); and

C (b) a third party charge by the third plaintiff over its land (Geran 38350, Lot 2144, Mukim Selemak, District of Rembau, Negeri Sembilan).

D **[7]** The rights and liabilities of Southern Bank under these banking facilities were transferred to, and vested in, Bank Bumiputra Commerce Bank Bhd in 2006. Subsequently on 11 February 2009, these rights and liabilities were transferred and vested in the present defendant. The relevant vesting order of the High Court appears on pp 102–150 of the agreed bundle of documents.

E **[8]** The defendant agreed to allow these charged properties to be redeemed for RM1m and RM6m respectively. The redemption sums were paid through a letter dated 29 July 2009 from the plaintiffs' solicitors, Messrs Lee Kong & Co and addressed directly to the defendant. This letter required the defendant to forward a list of 'Redemption Documents' within seven days from the

F clearance of the payment. The solicitors did not include the discharge of charge documents, which had to be prepared by the plaintiffs' solicitors, being the chargors' solicitors, for the defendant's execution.

[9] This letter appears on pp 191–193 of the agreed bundle, and it is

G noteworthy para 5 of the letter states:

> 5 Meanwhile, kindly confirm whether CIMB BANK BERHAD OR your goodselves shall sign all the relevant Discharge of Charge (Borang 16N) and relevant Form 42(B) in order for us to prepare the said Discharge of Charge and Form 42(B) for CIMB BANK BERHAD's execution OR for your Attorney's execution.

H

[10] The 'Redemption Documents' were delivered by the defendant on 30 September 2009, after three reminders. The discharge of charge documents were prepared by the plaintiffs' solicitors and forwarded to the defendant on 12

I October 2009 for its execution.

[11] By letter dated 10 November 2009, the plaintiffs' solicitors gave the defendant 48 hours to deliver the discharge of charge documents and all documents necessary, which the defendant did on 10 November 2009.

[12] The discharge of charge documents were presented by the plaintiffs' solicitors at the land office on 11 November 2009.

[13] These letters can be found at pp 195–197 (first reminder), 198–200 (second reminder), 201–203 (third reminder), 204–205 (the defendant's reply), 206–208 (the plaintiffs' solicitors forwarding discharge of charge documents), 214–215 (the defendant's reply and request for additional information), 216–217 (the plaintiffs' solicitors' reply), 219–220 (the defendant's reply forwarding the completed discharge of charge documents), 223–225 (the plaintiff's solicitors' demand to the defendant to forward the documents within 48 hours), 226–228 (the plaintiffs' solicitors' letter presenting the discharge of charge documents to the land office), and 241–242 (the defendant's solicitors' reply to the demand).

[14] It may be useful to quote the demand letter from the plaintiffs' solicitors to encapsulate the dispute between the parties. The relevant parts read:

> The payment of the aforesaid redemption sums is subject to your express undertaking to deliver the following documents within 7 days upon clearance of our clients' cheques:-
>
> (i) The Original Document of Title held under Geran 88410, Lot 19502 …
>
> (ii) The Registrable Duplicate Charge vide Charge Presentation No. 783/2003 …
>
> (iii) The Original Document of Title held under Geran 38350, Lot 2144 …
>
> (iv) The 3 Registrable Duplicate Charges vide Presentation No. Charge Presentation …
>
> (v) The 2 sets of the duly completed Discharge of Charge Form (Borang 16N)
>
> (vi) The 2 certified true copies of the Court Vesting Order for the Change of Name from Southern Bank Berhad to CIMB Bank Berhad …
>
> (vii) The 2 certified true copies of the Court Vesting Order for the Change of Name from CIMB Bank Berhad to Sinesinga Sdn Bhd …
>
> (viii) The Duly Executed Form 42(B) in respect of Charge created vide Charge Presentation No. 738/2003 … and the Charges created vide Charge Presentation Nos. (i) 9916/2003 … (ii) 2967/1996 … and (iii) 21707/2003 …
>
> c. You have failed, neglected and/or omitted to deliver all the documents mentioned at paragraph (b) hereof to our client and/or its solicitors within the stipulated time period.
>
> d. As a result of your failure, negligence and/or omission mentioned at paragraph (c) hereof,
>
> (i) The Purchaser, Aneka Idaman Sdn Bhd, in respect of the property the particulars of Geran 88410 … has aborted the intended Sale & Purchase Transaction …

A (ii) The Purchaser, Aneka Idaman Sdn Bhd, in respect of the property bearing the particulars of Geran 38350 … has aborted the intended Sale & Purchase Transaction …

Our clients have instructed us to demand from you, which we hereby do, to deliver all documents as stated at paragraph (b) hereof within 48 hours hereof, failing which our B clients shall commence with legal proceedings against you …

[15] The reply from the defendant's solicitors, on the other hand, reads, inter alia:

C

3. We have been instructed to inform you that all the relevant documents required to facilitate the redemption of the Properties and subsequently discharge the charge in favour of our client had been forwarded by our client to Messrs Lee Kong Fee & Co. solicitors for your client … The original Form 40 are not required to facilitate discharge of charge and need to be retained by our client for D statutory purposes.

4. We have also been instructed to inform you that the period of seven-working day within which our client was required to forward the stipulated documents was unilaterally imposed by (Plaintiffs' solicitors) on our client. Our client never agreed to such condition. In any event, it has come to our client's knowledge that E [Plaintiffs' solicitors] has on 12.11.2009 presented the necessary documents at the relevant registry to perfect the discharge of the charges involved …

5. In reply to paragraph (c) and (d) of your letter, our client has reason to believe that Aneka Idaman Sdn Bhd is a company related to Taman Ekar Sdn Bhd, Concept Resources Sdn Bhd and Ipsetia Sdn Bhd. Our client has also instructed F us that they were not privy to or aware of any purported third party sale agreements allegedly entered into or intended to be entered into by your client.

[16] Thus, as can be appreciated from at least these two letters, the plaintiffs G are claiming the defendant was bound to deliver the nine documents specified within the seven working days from clearance of payment, which it failed to do, and hence resulted in the sale and purchase with Aneka Idaman being aborted. The defendant argues the seven working day 'undertaking' was unilaterally imposed and in any event the plaintiffs have waived the requirement by H presenting the discharge of charge documents subsequently. The defendant disclaims any prior knowledge of the transaction with Aneka.

THE PLAINTIFFS' ARGUMENTS

I **[17]** The plaintiffs' counsel, Dato' RK Nathan, argues the case on the premise that there was only a partial handing over of the required documents. Rejecting the defendant's contention in regard to the alleged unilateral imposition of the seven day requirement, the plaintiffs argue it was the defendant that had set a period by which payment had to be made, and having

done so, it cannot now argue the seven day requirement has been unilaterally imposed. The defendant had requested for payment of the redemption sums by 31 July 2009. See letter of the defendant dated 28 July 2009 at pp 186–187 of the agreed bundle of documents. After having required urgent payment of the redemption sums, the defendant then took its time; there was allegedly a total disregard of the urgency of the matter. As a result of the delay in forwarding the documents, the sales to Aneka had to be aborted. Otherwise, the plaintiffs would have been in a position to extinguish their debt of RM2.5m. So it is argued.

[18] The importance of the seven day period is further stressed in the three reminders sent.

THE DEFENDANT'S ARGUMENTS

[19] The defendant's position rests on the seven working day undertaking being unilaterally imposed, and further, being waived when the plaintiffs accepted the redemption documents and then later proceeded to present the discharge of charge documents at the land office. Reliance is placed on the requirements of s 56 of the Contracts Act 1950:

> Effect of failure to perform at fixed time, in contract in which time is essential.
>
> 56(1) When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promise, if the intention of the parties was that time should be of the essence of the contract.
>
> Effect of acceptance of performance at time other than that agreed upon
>
> (3) If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of the promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he gives notice to the promisor of his intention to do so.

[20] By the plaintiffs' act of accepting the redemption documents beyond the time specified, time became at large.

[21] Counsel for the defendant, Mr Lambert Rasa Ratnam, argues thus:

> That time was at large is evident from the 3 reminders also the following undisputed facts.
>
> a. The Redemption Documents were delivered on 30.9.2009 to the Plaintiffs' solicitors who accepted them without any complaint.
>
> b. The Plaintiffs' solicitors subsequently prepared and delivered the respective

Discharge of Charge to the Defendant to the Defendant on 12.10.2009 for the Defendant's execution. There was also no complaint by the Plaintiffs then.

On the undisputed facts, the Plaintiffs have waived the 7 day period and are now stopped from claiming breach of the 7 day period, which in any case was a time period unilaterally imposed by the Plaintiffs.

DECISION OF THIS COURT

[22] Based on the agreed documents, and upon considering the arguments of the parties, I do not find the claim under para 23(b) proven, for the following reasons:

(a) it is by no means established that the seven day condition was agreed to expressly by the defendant; indeed the evidence suggest it was a unilateral imposition;

(b) it is not established that the parties agreed time was to be of the essence in the way suggested by the plaintiff. I take note that under s 56(1) of the Contracts Act, the reference is to 'When a party promises to do a certain act on or before a specified time'. On the facts of this claim, that party has to be the defendant. It has to be proven as a requirement under the law that the defendant has promised to deliver within the seven days on the terms alleged by the plaintiffs. Any unilateral imposition by the plaintiffs will not satisfy the requirement of s 56;

(c) it must additionally be established that it was expressly agreed by the parties that time shall be of the essence. The sub-section speaks of 'if the intention of the parties was that time should be of the essence of the contract';

(d) on the agreed documents too, I find sufficient evidence of waiver on the part of the plaintiffs, even assuming the defendant had promised to deliver the redemption documents within the seven days from the clearance of the two cheques. To this extent, I find the equitable principles as laid down in *WJ Alan & Co v El Nasr Export and Import Co* [1972] 2 QB 189 to be specially on point:

> … the principle of waiver is simply this: If one party, by his conduct, leads another to believe that the strict rights arising under the contract will not be insisted upon, intending the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict legal rights when it would be inequitable for him to do so … (per Lord Denning MR at p 213 of the report).

(e) there is sufficient evidence on which to conclude the plaintiffs had accepted the performance of the promise to deliver the discharge/redemption documents at a time other than that agreed. In

such a situation, the plaintiffs must satisfy the requirements under s 56(3), ie the plaintiffs, as the promises, cannot claim compensation for any loss occasioned by the non-performance, unless, at the time of the acceptance, they give notice of their intention to do so. I cannot find evidence of this indication made 'at the time of the acceptance'. The authority cited by the plaintiffs to support their case, namely *Sakinas Sdn Bhd v Siew Yik Hau & Anor* [2002] 5 MLJ 497, supports this reading by drawing a distinction between non-performance of an act and the non-performance of a promise made. Nevertheless, the line between the two can be blurred in some factual situations. To accept the non-performance of an act promised to be done within a certain time can mean at the same time an acceptance of a failure of a promise to do that act within that specific time;

(f) the relevant passage which is cited to lend support to the plaintiffs' position is the following:

> In my opinion, the words 'at any time other than that agreed' do not refer to the act of accepting performance of the promise, but refer to the performance of the promise itself. The words 'If … the promisee accepts performance of the promise at any time other than that agreed' do not mean that performance has been delayed but is now completed and the promisee now, at a time later than the agreed time, accepts the performance. If that were so, and the promisee now gives notice of intention to claim compensation, the notice cannot be of any practical use to the promisor, except to enable him to know in advance that there will be a claim against him and he had better get ready with the money to pay his lawyers, and the promisee, if the promisee should succeed, which I do not think is the intended purpose of the notice. The phrase really means, in my opinion, the promisee accepting, meaning agreeing, that the promisor who has been in breach as to time may perform his promise at some other time, which has to be a time later than the time of the promisee's so agreeing. At the time of the promisee's so agreeing, the performance has not been completed yet. The promisee says, 'It's all right. Although the contract is now voidable because of your delay, I will not void it. You may complete it later, on such and such a date'. At the time that he says so, the promisee, if he wants to claim compensation for the delay, must give notice of his intention to claim compensation, otherwise the promisor is entitled to assume that he will not be liable to any compensation. The notice is important as it will enable him to come to a commercial decision whether it is viable for him to go on performing if he is going to have to pay compensation.

(g) this passage has relevance in the context of a late delivery of vacant possession of premises governed by the Housing Development (Control and Licensing) Act. Where a house purchaser accepts late delivery of vacant possession by the developer, he is not said to have accepted the late performance of the promise itself, but merely the act of accepting

performance of the promise, such that the acceptance of late delivery will not bar him from suing for liquidated and ascertained damages without requiring to give notice under s 56(3) of the Contracts Act 1950. While such a distinction can be appropriately drawn in this context of late delivery of vacant possession where time is of the essence in a sale and purchase agreement, it may be less appropriate in a situation that presents itself in this instant case which is premised on an alleged late delivery of 'Redemption Documents', in what is essentially a series of correspondence between the plaintiffs' solicitors and the defendant;

(h) it therefore becomes more of a factual and evidential issue of whether time was regarded by both parties as of the essence (the seven days) and not unilaterally imposed, and, if time be of the essence, whether it has been complied with by the defendant, or waived by the plaintiffs.

(i) I should think this will be a more appropriate approach rather than a simple analysis of legal principles based purely on the *Sakinas* reasoning;

(j) I think it is important to appreciate the court is presently addressing an issue related to an undertaking in the context of a conveyancing transaction. There is little evidence to establish the defendant agreed without qualification to deliver the nine documents within the seven days. Indeed, the discharge of charge documents (to be addressed immediately below) were then not yet available to be delivered;

(k) it is not disputed that the discharge documents, principally *Borang* 16N and *Borang* 43B were prepared, and presented by the plaintiffs' solicitors, together with *Borang* 16N at the land office, and the charges over the lands were discharged. I have borne in mind these statutory documents had to be prepared by the plaintiffs' solicitors and executed by the defendant, not the reverse. The plaintiffs did not require all the documents they wanted within the seven days for the purposes of the discharge. See pp 226–227, bundle A; and

(l) in any event, it has not been established on the agreed documents the defendant was fully aware, at the time the request for the discharge of charge and redemption documents was made, of the two sale and purchase agreements with Aneka Idaman.

CONCLUSION AND ORDER

[23] In the circumstances and for these reasons, I am dismissing the plaintiffs' claim for compensation under para 23(b), (c), (d) and (e) with costs, since I do not find on the agreed evidence liability has been established.

[24] The claim under s 23(a) is struck out with liberty, since the plaintiffs

have withdrawn this aspect of their claim on these terms. I award costs of RM10,000 to be paid by the plaintiffs to the defendant within one month from the date of this court's order.

Plaintiffs' claim for compensation dismissed with costs.

Reported by Kohila Nesan